



Waukesha County Criminal Justice Collaborating Council  
Evidence-Based Decision Making Pretrial Workgroup  
Friday, April 8, 2016

**Team Members Present:**

Judge Jennifer Dorow (Co-Chair)  
Sara Carpenter (Co-Chair)

Laura Lau  
Sue Oppen

Sam Benedict  
Craig Kuhary

**Also Present:** Rebecca Luczaj

Dorow called the meeting to order at 12:05 PM.

**Approve Minutes from April 5, 2016**

Motion: Kuhary moved, Lau second, to approve the minutes of April 5, 2016. Motion carried unanimously.

**Discuss & Consider Risk Tool to be Implemented for the Intoxicated Driver Intervention Program**

➤ **Determine Dosage of Supervision for Corresponding Risk Level**

Kuhary stated that he has sent a follow-up email to Nathan Lowe regarding the risk tool for pretrial OWI offenders he is developing, but has not heard back from him yet.

Oppen arrived at 12:15 PM.

Luczaj distributed two handouts: the final revision of the "*OWI Pretrial Risk Assessment*" and the "*Pretrial OWI Risk Tool Levels and Corresponding Supervision Dosage*." The group discussed the definition of "employment" on the tool at length, debating whether students and those on disability should be exceptions to being classified as unemployed. After much discussion, the group agreed to leave the scoring for this category as-is, since this is how the original tool was designed. Dorow asked the group if there were any more questions or concerns about the revised tool. Oppen said she is ok with the tool, with the understanding that it is being implemented as a pilot. Benedict said he is ok with the point scoring; however, he does not think Remote Breath is a low-risk method of supervision. Dorow stated we could give the defendants a choice between Remote Breath or SCRAM. Benedict said that by using this risk tool, a majority of defendants will be on Remote Breath or SCRAM, which is a higher level of supervision than we currently use in the program. This supervision model only reduces the frequency of defendants' in-person visits to WCS, but WCS will be using technology to monitor them 24/7. Dorow stated that, on a policy level, people will want to see this level of electronic supervision if defendants are not required to report in as often. However, she does not disagree with Benedict; if defendants are low risk, research indicates they do not need supervision. Oppen reminded the group that the pretrial OWI population is different, though, than the general pretrial population. Dorow said she is in favor of the dosage supervision matrix we put together, with the addition of giving defendants the option of being on Remote Breath or SCRAM.

Carpenter said she would email the group research from Alcohol Monitoring Systems (AMS) on Remote Breath, and will bring one of the devices to the next meeting so that members can see the technology and understand how it works.

Dorow left at 12:35 PM.

Benedict stated he is not in favor of the universal use of technology for low risk defendants, and indicated that an unintended outcome of this will be more court appearances for non-compliance. Kuhary asked if we could create a category for low risk defendants who just report to WCS for testing because SCRAM is expensive. He has clients who would most likely rather pay the program fee and report to WCS on a regular basis. Benedict asked what happens to indigent 2<sup>nd</sup> OWI offenders who are low risk, have no money, and no land line? Carpenter responded that their fees for Remote Breath would be reduced to \$5.50/day and \$6/day for SCRAM and they would be required to report to WCS every other week. WCS does not require any money up front from clients, and they do not report to the courts or discharge someone from the program if they cannot afford to pay the fees. Benedict predicted that as required program costs for defendants increase, so too will the likelihood of litigation.

Kuhary stated that the group agrees on dosage of supervision for moderate and high-risk defendants; it is the low-risk category of defendants that the group cannot agree on. Kuhary proposed an alternative for supervising low-risk defendants: a shorter period on Remote Breath/SCRAM, followed by random drug/alcohol testing through WCS' color call system. Benedict stated that if defendants are low risk, then not everyone needs absolute sobriety ordered by the courts, but he knows judges feel differently about this. Kuhary said everyone is ok with absolute sobriety being ordered, but they disagree on how it should be monitored. Benedict said Kuhary's alternative proposal will still be a problem for his clients because they typically do not have transportation to be able to get to the WCS office for testing. It is hard to assess the disruption for low-risk defendants until we test it through a pilot. Benedict reiterated that he does not think absolute sobriety should be ordered for everyone. Lau responded that the current practice is to order absolute sobriety for everyone.

Benedict asked what about those low risk defendants charged with drugged driving. How do we supervise them using this model? The group agreed that this topic needs to be discussed further at the next meeting. Benedict stated that he is ok moving forward with the dosage supervision matrix as-is, even with his reservations. Kuhary said he is opposed to requiring Remote Breath/SCRAM for all low-risk defendants.

#### **Discuss & Consider Recommended Workgroup Change Strategy to Present to EBDM Policy Team on 4/13**

Luczaj distributed and reviewed a handout entitled "*Waukesha County EBDM Pretrial Workgroup Recommended Change Strategy*." The group briefly discussed the contents of the workgroup's change strategy document that will be presented to the Policy Team on April 13, to include: current practice in Waukesha County, recommended change strategy, recommended instrument, and objectives.

#### **Discuss Next Steps & Set Date for Next Meeting**

Carpenter will work on a draft of the workgroup's change strategy and email it to Dorow and Luczaj for review by Tuesday, April 12. Luczaj will send a Doodle survey to the group to determine the date for the next meeting.

#### **Adjourn**

The meeting adjourned at 1:21 PM.